

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, :
 :
vs. : DOCKET NUMBER
 : 1:20-MJ-0943 & 1:20-CR-0466
RICHARD TYLER HUNSINGER, :
 : ATLANTA, GEORGIA
DEFENDANT. : NOVEMBER 10, 2020

**TRANSCRIPT OF AUDIO-RECORDED PRELIMINARY AND DETENTION HEARING
PROCEEDINGS**

**BEFORE THE HONORABLE LINDA T. WALKER
UNITED STATES MAGISTRATE JUDGE**

APPEARANCES OF COUNSEL:

FOR THE GOVERNMENT:

RYAN K. BUCHANAN
UNITED STATES ATTORNEY'S OFFICE

FOR THE DEFENDANT:

JOHN R. LOVELL
JOHN R. LOVELL, ESQ., P.C.

**MECHANICAL STENOGRAPHY OF PROCEEDINGS AND COMPUTER-AIDED
TRANSCRIPT PRODUCED BY:**

**OFFICIAL COURT REPORTER: SHANNON R. WELCH, RMR, CRR
2394 UNITED STATES COURTHOUSE
75 TED TURNER DRIVE, SOUTHWEST
ATLANTA, GEORGIA 30303
(404) 215-1383**

I N D E X T O P R O C E E D I N G SWITNESSPAGE

SPECIAL AGENT NATHAN BURNHAM

Direct Examination

By Mr. Buchanan

5

Cross-Examination

By Mr. Lovell

7

ROBERT HAWKINS HUNSINGER

Direct Examination

By Mr. Lovell

26

Cross-Examination

By Mr. Buchanan

33

* * *

CERTIFICATE

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P R O C E E D I N G S

(Atlanta, Fulton County, Georgia; November 10, 2020.)

COURTROOM DEPUTY CLERK: The Magistrate Court for the Northern District of Georgia is now in session, the Honorable Linda T. Walker presiding.

THE COURT: Please be seated.

The Court calls the case of the United States of America vs. Richard Tyler Hunsinger. This is Criminal Complaint Number 1:20-MJ-0943.

We have appearing on behalf of the Government Ryan Buchanan. And appearing on behalf of the defendant, we have John Lovell.

We are here this afternoon for a detention hearing -- we are having both preliminary and detention or just a detention?

MR. LOVELL: Both, Your Honor.

THE COURT: Okay. For a preliminary hearing and detention hearing.

Okay. Is the Government ready to proceed?

MR. BUCHANAN: Yes, Your Honor.

THE COURT: Okay. Mr. Lovell, are you ready to proceed on behalf of the defendant?

MR. LOVELL: Judge, I just want to point out that we have maybe a dozen or more other people that would like to be here to witness this. I don't know if there is a way to use a

1 larger courtroom or if there is some way to accommodate them.

2 They have all come here to support Mr. Hunsinger and
3 to be present.

4 THE COURT: As a result of the pandemic, in March the
5 Court has decided -- most magistrate judges, we are only
6 allowing ten people in. We have stretched that a little to 12,
7 13 here or there.

8 But no. We should have -- if we had had prior
9 notice, we probably could have moved it to a larger courtroom.
10 But we have to go with what we have now. So this is it.

11 And so just for -- this has nothing to do with this
12 particular case or this defendant. This has been our policy
13 throughout the pandemic.

14 So are you ready to proceed?

15 MR. LOVELL: Yes, Your Honor.

16 THE COURT: Okay.

17 Mr. Buchanan?

18 MR. BUCHANAN: Your Honor, with respect to probable
19 cause, the United States called Special Agent or Task Force
20 Agent Nathan Burnham.

21 THE COURT: Okay.

22 COURTROOM DEPUTY CLERK: If you would, raise your
23 right hand please to be sworn. Thank you.

24 **(Witness sworn)**

25 COURTROOM DEPUTY CLERK: Thank you, sir. You can

1 take your seat.

2 And if you would, please, sir, state your full name
3 for the record and spell your last name for the Court.

4 THE WITNESS: Sure. It is Nathan Allen Burnham.
5 Last name is spelled B-U-R-N-H-A-M.

6 COURTROOM DEPUTY CLERK: Thank you, sir.

7 THE COURT: You may proceed.

8 MR. BUCHANAN: Thank you.

9 Whereupon,

10 SPECIAL AGENT NATHAN BURNHAM,
11 after having been first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BUCHANAN:

14 Q. Special Agent Burnham, how are you employed?

15 A. I'm a special agent with Homeland Security Investigations
16 here in Atlanta, Georgia.

17 Q. And how long have you been with HSI?

18 A. Since 2008.

19 Q. And are you currently assigned to a different agency?

20 A. I am. I am currently assigned to the FBI's joint
21 terrorism task force.

22 Q. And how long have you been with the task force?

23 A. Since June.

24 Q. And during the course of your employment with the task
25 force, have you participated in an investigation involving some

1 vandalism and a fire that occurred at the DHS building on
2 July 25th of 2020?

3 **A.** Yes, sir.

4 **Q.** And you are familiar with how that investigation has
5 proceeded?

6 **A.** Yes, sir, I am.

7 **Q.** And during the course of that investigation, did you
8 participate or are you aware of the arrest of Richard Tyler
9 Hunsinger?

10 **A.** Yes, sir.

11 **Q.** And do you see Mr. Hunsinger in court today?

12 **A.** I do.

13 **Q.** Please identify him by a bit of clothing that he is
14 wearing.

15 **A.** He is the gentleman sitting at the defense table with the
16 orange jumpsuit.

17 **Q.** And, Special Agent Burnham, during the course of your work
18 in this case, did you draft a complaint affidavit and sign a
19 criminal complaint related to Richard Tyler Hunsinger?

20 **A.** Yes, sir, I did.

21 **Q.** And was that complaint then sworn before Judge Walker?

22 **A.** Yes, sir.

23 **Q.** And to the best of your knowledge and as the investigation
24 has gone on since you signed that complaint, are there any
25 facts that you have learned that would cause you to believe

1 that that complaint needs to be adjusted or edited in any way?

2 **A.** No, sir.

3 MR. BUCHANAN: No more questions related to probable
4 cause, Your Honor.

5 THE COURT: Mr. Lovell, your witness.

6 MR. LOVELL: Thank you, Your Honor.

7 THE COURT: Uh-huh (affirmative).

8 CROSS-EXAMINATION

9 BY MR. LOVELL:

10 **Q.** Good afternoon, Investigator Burnham. We met previously
11 beforehand. My name is John Lovell, and I do have a few
12 questions for you.

13 **A.** Sure.

14 **Q.** First, I would like to talk to you a little bit about the
15 Federal Protective Services inspector, K.C., who we have
16 identified by -- those are his initials, K.C.; is that correct?

17 **A.** Correct.

18 **Q.** All right. And where was K.C. -- of course, we're talking
19 about your affidavit on July 25th pertaining to activities that
20 occurred allegedly on July 25th of 2020, just to set the time;
21 correct?

22 **A.** Correct.

23 **Q.** All right. Where was -- and even to be more specific,
24 we're talking about something that is alleged to begin about at
25 11:30 P.M.?

1 **A.** Yes, sir. That's accurate.

2 **Q.** All right. At about 11:30 P.M., is it correct that some
3 protestors arrived at the subject location, which I believe is
4 180 Ted Turner?

5 **A.** Yes.

6 **Q.** All right. And do you know where K.C. was in the building
7 at 180 at 11:30 on the 25th of July?

8 **A.** I know that he was inside the building at 180 Ted Turner.
9 But I'm not familiar with exactly where his precise location
10 was at 11:30, no, sir.

11 **Q.** All right. And do you know what caused him -- what drew
12 his attention to the -- to the disturbance outside the
13 building?

14 **A.** Well, I can only surmise that the broken windows and
15 lasers that were being portrayed into the building drew his
16 attention.

17 **Q.** Okay. So when the lasers were initially being shown on
18 the building, he was not visible? He was not at a window, but
19 that drew his attention to the window; is that correct?

20 **A.** I can't say that, no.

21 **Q.** Okay. You don't know?

22 **A.** I don't know.

23 **Q.** Okay. Do you know whether people outside were able to
24 observe that there was a human being located in the building on
25 July 25th, 2020, at 11:30 P.M.?

1 **A.** I couldn't speak to what the protestors saw, no, sir.

2 **Q.** Okay. There were no signs that were indicating that there
3 was a person conducting live surveillance at that time; is that
4 correct?

5 **A.** I'm unaware of any signage that would say that there are
6 persons in the building, no, sir.

7 **Q.** Okay. And the building was dark?

8 **A.** No. It had lights on.

9 **Q.** All right. So when -- as these lights were lit up from
10 the street, are you aware of whether Mr. -- whether K.C. was
11 visible from the street?

12 **A.** I do not know that.

13 **Q.** So as it stands today, you can't tell the judge whether an
14 individual on the street would have had reason to know that
15 there was an occupant in the building at 180; is that correct?

16 **A.** There was an occasion in which the cameras do depict an
17 officer opening the door and looking outward towards the crowd.
18 But I can't -- again, I can't stipulate or know what possibly
19 the protestors saw at that point.

20 **Q.** And is this -- is this -- was there a point in time when
21 the perimeter of the building was breached?

22 **A.** Yes, sir.

23 **Q.** All right. And when the door was opened by the officer,
24 was that prior to or after the breaching of the building?

25 **A.** I can't recall.

1 Q. But you have watched that?

2 A. I have.

3 Q. But you don't recall when it happened?

4 A. I can't remember the time line of events in which that
5 occurred.

6 Q. Okay. All right. So your memory is less than perfect on
7 these events; is that correct?

8 A. On that particular fact, yes.

9 Q. All right. Let me direct your attention then to
10 Paragraph 18 of your affidavit where you allege that the car
11 was identified by a license plate reader, which you abbreviate
12 with LPR. So we will feel free to refer to that by those
13 initials.

14 And you write, quote, a few hours before the start of the
15 damage, unquote, the LPR picked up a vehicle that was
16 registered to one Kathryn Richards; is that correct?

17 A. That's correct.

18 Q. All right. And Kathryn Richards you have identified as
19 the significant other of my client?

20 A. Yes, sir.

21 Q. Okay. Can you be more -- it is funny. I have this
22 discussion with my wife on what a few means. I think of it as
23 three. And she thinks of it as up to ten.

24 A. Sure.

25 Q. How do you define a few or in this case a few of?

1 **A.** I think the time may have been delineated in the complaint
2 itself. But I think it was within a two- to three-hour period
3 prior to the event.

4 **Q.** All right. If I -- and I may have missed it. Fortunately
5 I had the good sense to mark it as Paragraph 18. So I'm going
6 to go take a look at that again.

7 And I'm sorry. You do delineate that as 8:49 P.M.

8 So just under three hours prior to the incident?

9 **A.** That would be accurate.

10 **Q.** Okay. Turning then your attention -- actually staying
11 then on the LPRs, were you able to identify whether there were
12 any LPRs that were any closer to the subject building at 180
13 Ted Turner?

14 **A.** Well, if there were, I'm not aware of any.

15 **Q.** Okay. And how did you -- did you personally look through
16 the data and search vehicles that passed under these LPRs at
17 about this time in the evening?

18 **A.** No, sir, I did not.

19 **Q.** Someone from the Atlanta Police Department did it?

20 **A.** I believe that is correct, yes, sir.

21 **Q.** All right. And is that --

22 **A.** Or another member of the task force.

23 **Q.** I understand. Someone other than you?

24 **A.** Someone on the investigative team, yes, sir.

25 **Q.** Okay. So you just received a report that summarized --

1 summarized --

2 **A.** I received information that that was, in fact, the case;
3 that that point was read by the license plate reader at that
4 time.

5 **Q.** Okay. All right. And you are not aware of whether there
6 were -- and that reader wasn't -- and I'm going to read from
7 Paragraph 18.

8 That reader, that LPR, was approximately four miles from
9 the DHS building?

10 **A.** I believe that is correct, yes, sir.

11 **Q.** And I have used -- I have described it as 180 Ted Turner
12 Drive. And that is interchangeable with the DHS building?

13 **A.** Correct.

14 **Q.** Those terms are referring to the same building?

15 **A.** Yes.

16 **Q.** All right. All right. I want to ask you -- staying right
17 in that area of the affidavit at Paragraph 19, you indicate
18 that you acquired the records of Mr. Hunsinger for his Twitter
19 account.

20 Is that accurate?

21 **A.** Yes, sir.

22 **Q.** And was that acquired pursuant to a warrant?

23 **A.** No, sir. That was, I believe, by a grand jury subpoena.

24 **Q.** Okay. Grand jury subpoena.

25 And without discussing the content of your testimony

1 there, is it then -- have you testified in front of a grand
2 jury?

3 **A.** I have not.

4 **Q.** Okay. And I'm not going to go any further into grand
5 jury.

6 Let's see. Similarly, the hospital was approached and
7 records were gathered from the hospital pertaining to patients
8 that were treated for lacerations on the evening of July 25th
9 or perhaps the early morning hours of July 26th; is that
10 correct?

11 **A.** Yes, sir.

12 **Q.** All right. And was that gathered pursuant to a warrant?

13 MR. BUCHANAN: Objection. It is not relevant to
14 probable cause, Your Honor.

15 THE COURT: Sustained.

16 **Q.** **(BY MR. LOVELL)** Are you familiar with the requirements of
17 the Health Insurance Portability and Accountability Act?

18 MR. BUCHANAN: Same objection, Your Honor.

19 THE COURT: (Unintelligible) respond to the question.

20 **Q.** **(BY MR. LOVELL)** It is more commonly -- the Health
21 Insurance Portability and Accountability Act, more commonly
22 referred to by the acronym HIPAA.

23 Are you familiar with that?

24 **A.** Generally.

25 **Q.** All right.

1 MR. BUCHANAN: Same objection.

2 THE COURT: Sustained.

3 **Q. (BY MR. LOVELL)** All right. We're going to talk a little
4 bit about the -- some of the Tweets that you have reported in
5 your affidavit.

6 At Paragraph 24, you quote a Tweet that allegedly came
7 from an account controlled by Mr. Hunsinger. And the Tweet
8 reads, quote, the police must be treated as occupiers and
9 engaged with as such. We are in for a long, hot summer and a
10 year that still has to fully unfold.

11 And then continues on the same date, August 28th, with a
12 quote that says, set fire to the next white -- and I want you
13 to focus on this second quote that I'm reading now. Quote, set
14 fire to the next white anarchist autonomous zone that pops up.
15 Throw Molotovs into any white anarchist-led squat you come
16 across. Treat these anarcrakkkas like cops because ain't no
17 reason why colonizers is being given passes to reclaim space on
18 stolen land just to kill us.

19 Now, that quote you allege was a re-Tweet from
20 Mr. Hunsinger; is that correct?

21 **A.** I believe that is accurate, yes, sir.

22 **Q.** And do you have any -- are you able to explain to me what
23 exactly the significance of that quote is -- what it means?

24 **A.** The significance of what the writer wrote?

25 **Q.** Yes. What does it mean?

1 **A.** I couldn't guess what his intent was in stating that.

2 I think the purpose of us putting that into our complaint
3 was the fact that it references the use of Molotov cocktails,
4 to which he affirmatively responded to.

5 **Q.** But, otherwise, you have -- the general content of it you
6 don't have any interpretation? You are not able to offer any
7 interpretation of it?

8 **A.** I am not, no, sir.

9 **Q.** Okay. Let me then direct your attention to Paragraph 23.
10 And I'm going to quote you again. Minneapolis police have
11 killed again. Rioting is spreading in the city without
12 hesitation. They will kill and kill as long as they exist. If
13 the system cannot stop them, we will. Time's up.

14 When they refer to the -- in the third sentence -- and,
15 again, this was a re-Tweet? Let me establish that first. This
16 was a re-Tweet?

17 **A.** I don't recall specifically if that was a re-Tweet or if
18 that was Mr. Hunsinger's particular Tweet. I would have to
19 refresh my memory with the complaint.

20 **Q.** Do you have your copy of the complaint --

21 **A.** I don't have it with me, no, sir.

22 **Q.** -- with you? May I -- I can give you mine. Or it might
23 expedite things if yours is at the table if I hand you your
24 own.

25 MR. LOVELL: May I approach, Your Honor?

1 THE COURT: Yes, you may.

2 Q. (BY MR. LOVELL) I have been handed by Mr. Buchanan what
3 appears to be another copy. I think it is yours. I'm handing
4 that to you.

5 And I'm going to direct your attention now to the top of
6 Page -- toward the top of Page 5 at Paragraph 23. Let's just
7 go through that line by line.

8 Minneapolis police have killed again. Now, historically,
9 do you recognize the allegation or the reference to the
10 Minneapolis police having killed again?

11 A. I do.

12 Q. And that is a -- what is that a reference to?

13 A. I believe that is a reference to the death of George
14 Floyd.

15 Q. All right. And, now, is that -- in your view, was that
16 the death of George Floyd or was that the murder of George
17 Floyd?

18 MR. BUCHANAN: Objection, Your Honor. This is
19 completely irrelevant to probable cause.

20 THE COURT: Sustained.

21 Q. (BY MR. LOVELL) The next sentence reads, rioting is
22 spreading in the street without hesitation.

23 And is it safe to say, Agent, that that is a reference to
24 what was going on in Minneapolis?

25 A. And elsewhere.

1 Q. Okay. And then the next sentence, the third sentence,
2 reads, they will kill and kill as long as they exist.

3 That is a reference to the police; correct?

4 MR. BUCHANAN: Same objection.

5 MR. LOVELL: Judge, this is one I would like to be
6 heard on. This is -- he thought this was important enough to
7 place it in that it helps establish probable cause. We need to
8 understand --

9 THE COURT: But you are asking him what someone has
10 re-Tweeted that someone else said what does it mean.

11 MR. LOVELL: I want to know why he thinks it is
12 relevant towards probable cause.

13 THE COURT: Okay. You can ask him that, why he
14 thought it was relevant.

15 MR. LOVELL: Okay.

16 Q. (BY MR. LOVELL) Why do you think that third sentence,
17 they will kill and kill as long as they exist -- why is that
18 relevant?

19 A. My interpretation is that they are being -- is clearly the
20 police.

21 Q. And then the next line, isn't it true that it expresses
22 some frustration that the system is not stopping the police
23 from killing?

24 MR. BUCHANAN: I would object to counsel trying to
25 characterize what the Tweets mean.

1 THE COURT: Overruled. I'll let him -- if he can
2 respond, he can respond.

3 A. Would you please restate the question.

4 Q. (BY MR. LOVELL) Would you like me to repeat that? Yes,
5 sir.

6 The fourth sentence in that paragraph -- in that quote
7 says, if the system cannot stop, then we will.

8 And that is a reference to the frustration that the system
9 has not stopped the police from killing?

10 A. Well, I can't speak to what their frustration is. I can
11 speak to what the sentence says, which is, if the system cannot
12 stop them, we will.

13 Q. Okay. I understand that.

14 MR. LOVELL: All right. Thank you, sir. I have no
15 further questions.

16 THE COURT: Okay. Do you have any redirect of this
17 witness?

18 MR. BUCHANAN: Not with respect to probable cause,
19 Your Honor.

20 THE COURT: Okay. You may step down.

21 THE WITNESS: Thank you, ma'am.

22 THE COURT: Argument regarding -- any other witnesses
23 on probable cause?

24 MR. BUCHANAN: No, Your Honor.

25 THE COURT: Okay. Any argument on probable cause,

1 Mr. Lovell?

2 MR. LOVELL: Your Honor, based upon the standard that
3 is presented here, at this point in time having heard from the
4 witness and we do not have any witnesses to offer in
5 contravention of probable cause today, I don't require the
6 Government to make an argument. I believe that with the
7 standard that is here the Court will find that there is
8 probable cause.

9 THE COURT: Okay. Thank you.

10 The Court finds probable cause as to Count 1, that on
11 or about July 25th, the defendant and others did maliciously
12 damage or attempt to damage by means of a fire a building,
13 vehicle, and other personal or real property in whole or in
14 part possessed or leased to the United States in violation of
15 Title 18 U.S. Code Section 844.

16 Also I find there is probable cause as to the second
17 offense set forth that on or about July 25th, 2020, in the
18 Northern District of Georgia, the defendant, aided and abetted
19 by others, did forcibly assault, resist, impede, intimidate,
20 interfere with a federal officer, that is, a Federal Protective
21 Services inspector, K.C., while he was engaged in the
22 performance of his official duties in violation of Title 18
23 United States Code Section 111.

24 The Court also finds probable cause with regard to
25 the next offense, that on this same date, July 25th, 2020, in

1 the Northern District of Georgia, the defendant, aided and
2 abetted by others, willfully entered and committed a
3 depredation against the property of the United States and an
4 agency thereof in violation of Title 18 U.S. Code Section 1361.

5 We will proceed now to the detention hearing.

6 Okay. Mr. Buchanan?

7 MR. BUCHANAN: Thank you, Judge.

8 The United States has moved to detain Mr. Hunsinger
9 while this matter is pending trial because there is not a
10 condition or set of conditions to reasonably assure the safety
11 of the community or his appearance as the trial of this matter
12 moves forward.

13 Your Honor, in working through the items that the
14 Court examined for detention in 18 U.S.C. 3142, I'll start with
15 the weight of the evidence or the seriousness -- nature and
16 circumstances of the offense.

17 Your Honor, the evidence established probable cause
18 that Mr. Hunsinger and others set a building on fire while at
19 least one person was inside it. I would posit to the Court
20 that there were actually two people there. There was a
21 security officer there and then the FPS inspector. But only
22 the FPS inspector gives rise to the assault charge in 18, 111.

23 This is a very serious offense. There were hundreds
24 of folks who were outside the building at that time. And so
25 hundreds of folks outside the building and two people inside

1 the building and these -- these items being thrown at and
2 ultimately into the building, that posed significant danger to
3 those folks who were inside the building.

4 So we believe that that first act that the Court
5 considers is actually something that tilts toward detention
6 because of the danger and the circumstances of this offense.

7 The next item the Court considers in 18 U.S.C. 3142
8 is the weight of the evidence against the defendant. The Court
9 is familiar with the complaint. This case is not a case that
10 the agents of the Government sort of rushed to quickly. It was
11 a methodical investigation.

12 Mr. Hunsinger posted an advertisement about this
13 event. His girlfriend's car was seen in the area before the
14 event. After the event, his girlfriend's car and an individual
15 fitting his description was seen right out in front of the
16 building while agents were still working on gathering evidence
17 and cleaning up, frankly, from what happened there before.

18 And then the evidence that it was actually
19 Mr. Hunsinger who -- who participated in the front of the
20 building, that weight is -- the weight of the evidence is
21 significant.

22 We know from the investigation that a person suffered
23 a cut because there was blood in and around that building and
24 on items that were inside that building. We know from the
25 investigation that Mr. Hunsinger later received treatment for a

1 laceration at a local hospital.

2 And, Your Honor, I've got some exhibits that I will
3 show that will assist the Court in understanding how the
4 Government came to that conclusion. I've sent a copy of these
5 and given a copy of these to Mr. Lovell. I'll mark them, Your
6 Honor, as Government's Exhibits 1 through 6.

7 So, Your Honor, the argument -- or to sort of rebut
8 the argument regarding whether or not these were sort of
9 peaceful protests and Mr. Hunsinger might have just happened to
10 be in the wrong place at the wrong time, that is rebutted by
11 these exhibits that I'm about to hand the Court.

12 In these exhibits in Government's 1, you will see an
13 individual who is dressed in all black. He has white shoes and
14 white gloves.

15 Government's Exhibit 2, that person is seen lighting
16 something on fire. Same gloves, same white shoes.

17 Exhibit 3, that person had the item lit on fire in
18 his hand. Same gloves, same shoes. And the Court is able to
19 see that there is a green laser being shined into the building.

20 And then on Government's Exhibit 4, this person is
21 preparing to toss that item that is lit on fire.

22 Government's Exhibit 5 is a picture of Mr. Hunsinger
23 at Grady Hospital -- at Grady Hospital. He has changed pants
24 at least, but the white shoes are still visible from the
25 pictures before.

1 And then Government's Exhibit 6 just shows a little
2 bit of the damage that was caused. And it shows the exterior
3 of that building was, in fact, damaged and it was -- it was
4 broken.

5 So, Your Honor, the United States would move with
6 respect to detention Government's Exhibits 1 through 6 for the
7 Court's consideration.

8 THE COURT: Okay.

9 MR. LOVELL: If I may, Judge, I have five. Let me
10 just see which one I'm missing and take a look at it.

11 THE COURT: Okay.

12 MR. LOVELL: Mr. Buchanan sent them to me via email
13 as well. So it looks like it is kind of repetitive what I
14 don't have. It is a little bit different.

15 I have no objection --

16 THE COURT: Okay.

17 MR. LOVELL: -- to the admissibility of these for the
18 purposes of this hearing.

19 THE COURT: Government's Exhibits 1 through 6 are
20 admitted.

21 MR. BUCHANAN: So, Your Honor, we believe that
22 Government's Exhibits 1 through 6 underscore, one, the
23 seriousness of it. You see this person -- we believe it is
24 Mr. Hunsinger -- with a lit item in his hand.

25 The complaint notices or references that items in

1 the -- there were sort of Molotov -- these improvised
2 explosives that were located inside the building. And then,
3 Your Honor, we again highlight the idea and the fact that there
4 were people inside this building when it happened.

5 So we believe the weight of the evidence is another
6 item that tips toward detaining Mr. Hunsinger while this matter
7 is -- is under -- is pending trial.

8 Following, Your Honor, we believe that the danger
9 Mr. Hunsinger poses, the evidence is toward detention. We
10 agree with the pretrial services report that noted that there
11 was not a set of conditions to assure the safety and
12 Mr. Hunsinger's appearance.

13 We note that in addition to there being this arson
14 that he participated in he talked about it. It wasn't a
15 secret. He openly talked about -- I believe in the complaint
16 that re-Tweet mentioned setting fire to stuff. It mentioned
17 throwing Molotov cocktails at things. He posted the
18 advertisement to gather and rally people before this event
19 happened. And then he rode by presumably afterwards to survey
20 what happened.

21 So his participation in this has not been a secret at
22 all. And just so we are absolutely clear and why I mean his
23 participation in this, I mean his participation in three
24 things: His participation in the assault on the officer who
25 was in the building, his participation in the arson of the

1 building, and his participation in the depredation of the
2 government property.

3 This case isn't about anything else that
4 Mr. Hunsinger has done. It is about those three things, his
5 participation in these things that are prohibited by federal
6 law.

7 And so, Your Honor, we steadfastly hold our position
8 that there is not a set of conditions that will assure the
9 safety of the community and Mr. Hunsinger's appearance. And so
10 he must be detained while this matter is pending trial.

11 THE COURT: Okay. Thank you.

12 Okay. Mr. Lovell?

13 MR. LOVELL: Thank you, Your Honor.

14 THE COURT: Uh-huh (affirmative).

15 MR. LOVELL: Judge, this morning -- I'm sorry -- this
16 afternoon, I met Robert Hunsinger. And through apparently a
17 technological glitch, he had sent me a letter from him and his
18 wife on behalf of their son. I do not have copies. So what
19 I'm going to do is -- and I also have a copy of my client's
20 expired passport.

21 I'm just going to let the Government look at those
22 now. As the only copy I have I'm going to tender in a few
23 minutes.

24 I do have one witness. I would like to call my
25 client's father, Robert Hunsinger.

1 THE COURT: Okay. Thank you. You may call him.

2 MR. LOVELL: Mr. Hunsinger, if you can make your way
3 around here the best you can. Everything is a little bit
4 tight.

5 COURTROOM DEPUTY CLERK: Okay. Please raise your
6 right hand, please, to be sworn.

7 **(Witness sworn)**

8 COURTROOM DEPUTY CLERK: Thank you, sir. You can
9 take your seat.

10 And if you would, please, sir, just state your full
11 name for the record.

12 THE WITNESS: Robert Hawkins Hunsinger.

13 COURTROOM DEPUTY CLERK: Thank you.

14 THE WITNESS: H-U-N-S-I-N-G-E-R.

15 COURTROOM DEPUTY CLERK: Thank you.

16 Whereupon,

17 ROBERT HAWKINS HUNSINGER,
18 after having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. LOVELL:

21 **Q.** Mr. Hunsinger --

22 **A.** Yes.

23 **Q.** -- are you nervous?

24 **A.** A little bit.

25 **Q.** All right. Do you need a water or anything?

1 **A.** No. I'm fine. Thank you.

2 **Q.** Just let me know.

3 You are Richard Hunsinger's father?

4 **A.** Yes.

5 **Q.** Correct?

6 And his mother -- what is his mother's name?

7 **A.** The mother's name is Tonda Ann Hunsinger.

8 **Q.** Is she here today?

9 **A.** No, she is not.

10 **Q.** Where do y'all reside?

11 **A.** Springfield, Virginia, just outside Washington, D.C.

12 **Q.** And where is -- what is your wife's name?

13 **A.** What is her name?

14 **Q.** Yes.

15 **A.** Tonda Ann Hunsinger.

16 **Q.** And why is she not here today?

17 **A.** Our daughter, Richard's younger sister, is pending surgery
18 in December. And we are both trying to avoid as little contact
19 and risk COVID as possible so that we can be with her during
20 that surgery.

21 **Q.** Okay. How -- how old are you, sir?

22 **A.** I'm 62.

23 **Q.** All right. And are you employed?

24 **A.** No. I'm retired.

25 **Q.** All right. Would you tell -- would you tell the Judge,

1 Judge Walker, about your career. Where were you educated?

2 **A.** I was educated here in Georgia at the University of
3 Georgia. I was a Georgia citizen -- or resident initially.

4 After graduation -- well, actually before graduation,
5 between high school and college, I joined the U.S. Air Force.
6 I worked in intelligence. I was a Russian linguist.

7 After four years of active duty, my wife and I returned to
8 Athens to go to school. After graduating from the University
9 of Georgia, we both reentered the Air Force as officers. We
10 both went back into intelligence.

11 I spent the remainder of my career in both the Air Force
12 and DOD as an intelligence officer, roughly 40 years total,
13 first as a linguist and then as an analyst and then various
14 staff positions as well throughout my career.

15 **Q.** And to be clear, you are retired, and you are 62. You
16 retired at what age?

17 **A.** At 62.

18 **Q.** And your wife had a similar career track, and she is now
19 retired?

20 **A.** Yes. She retired at 60, two years before I did.

21 **Q.** All right. Now, I would like to -- of course, you know
22 why we are here. We are here because right now in particular
23 to ask the Judge to set bond for your son.

24 Can you tell the Judge a little bit about your son?

25 **A.** Richard has always been a very inquisitive, very talented,

1 very bright individual. He has never been an issue as far as
2 behavior or any type of legal problems in high school or
3 college.

4 He graduated both high school and the University of
5 Georgia with honors. Graduated the University of Georgia magna
6 cum laude, Phi Beta Kappa.

7 He is very talented. He's played the guitar since he was
8 in grammar school, and he has a dual major in music performance
9 and music composition. Plays classical guitar.

10 In addition to, he has always been an avid reader, always
11 been intellectually curious, always been very good with people.
12 He has always had a wide circle of friends. People recognize
13 him for his sensitivity and his concern for themselves and
14 others around him.

15 He's -- he's just always been well liked. We have
16 always -- we have never had a problem with him. We always
17 figured that we wanted for him what every family wants for
18 their kids: Find someone to love, find a vocation that they
19 enjoy and that they are good at, and lead a happy life.

20 We would hope that Richard gets that opportunity.

21 **Q.** Mr. Hunsinger, you and your wife, Tonda, drafted a letter
22 to me on behalf of your son -- really it is to Judge Walker.
23 But you intended to email it to me; is that correct?

24 **A.** Yes. We emailed it -- actually, I left -- we finished it
25 up Sunday night. And my wife thought she had emailed it

1 immediately after that. And then I left for here yesterday.

2 Drove down on Monday.

3 **Q.** And you and I spoke just this afternoon, and we realized
4 that I had just received that letter for the first time?

5 **A.** Yes.

6 MR. LOVELL: All right. And I have given the
7 Government a chance to see this. And I'm going to tender as
8 Defense Exhibit 1 at this point in time a letter to join the
9 other 14 letters that I have already submitted on behalf of
10 the -- Mr. and Mrs. Hunsinger.

11 MR. BUCHANAN: No objection.

12 THE COURT: Okay. Defendant's Exhibit 1 --

13 MR. LOVELL: Yes, Your Honor.

14 THE COURT: -- is admitted.

15 MR. LOVELL: And I'll bring it up in just a second.
16 I'm going to do two at once, if that is okay.

17 THE COURT: Uh-huh (affirmative). That's fine.

18 **Q. (BY MR. LOVELL)** The next document I have, sir, is an
19 exhibit that I have marked as Defendant's Exhibit 2.

20 Does your son have a valid passport at this time?

21 **A.** No, he does not. He hasn't had a valid passport for eight
22 years.

23 **Q.** All right. And your wife has kept a copy of his -- what
24 appears to be quite an old passport; is that correct?

25 **A.** Yes, she has.

1 Q. I'm looking at this picture, and I think he was telling me
2 he was in tenth grade.

3 A. That was between his ninth and tenth grade.

4 MR. LOVELL: And similarly, Judge, I have allowed the
5 Government to see this. And I would now like to tender
6 Defendant's Exhibit 2, which is a photographed copy of the
7 passport of Richard Hunsinger -- the expired passport.

8 MR. BUCHANAN: No objection.

9 THE COURT: Government's Exhibit 1 and 2 are both
10 admitted.

11 Q. (BY MR. LOVELL) Mr. Hunsinger, I want to be clear about
12 one thing. You indicated that your son never had any problems
13 with the law in high school and college.

14 Are you aware that he was arrested in 2017?

15 A. Yes, sir, I was aware of that arrest.

16 Q. Okay. And, actually, he was arrested three times in that
17 year of 2017?

18 A. Yeah. I wasn't aware of all three arrests. I had
19 suspected that -- I thought that there were others. But I only
20 knew of really just the one.

21 Q. Okay. Now, let me ask you then really to get down to
22 brass tacks of why we are here today: Are you confident that
23 your son will not pose a threat to any individual or member of
24 the community?

25 A. I am very confident.

1 Q. All right. And, similarly, it is important to the Court
2 that your son come to court. Are you confident that your son
3 will appear in court as directed?

4 A. My experience is that Richard has always met his
5 obligations, that he -- he does not walk away from
6 responsibilities. If he is asked or ordered to appear, he will
7 appear.

8 Q. Now, Mr. Hunsinger, you are his father, and it is easy for
9 you to say that. So I'm going to ask you another question,
10 sir.

11 A. Yes.

12 Q. Are you willing -- you are retired. I take it you have
13 saved some money during the course of your career?

14 A. Yes.

15 Q. Are you willing to pledge your own assets to this Court to
16 assure the Court that your son -- to express your confidence
17 that he will be here as directed and not pose a threat to the
18 community?

19 A. Yes.

20 Q. All right. If the Court were to set bond at \$50,000 cash,
21 would you be able and willing to post that money?

22 A. It would take a day or two. But yes, I would be willing
23 to.

24 Q. And, again, you realize -- or let me be clear. Do you
25 realize that the Judge will set certain terms and conditions

1 and if your son violates those terms and conditions the Court
2 could order that money forfeited?

3 **A.** I understand.

4 **Q.** And you are willing to abide by that and put your own
5 money at risk?

6 **A.** Yes.

7 **Q.** All right. If we think it is a risk. Obviously you
8 don't.

9 MR. LOVELL: I have nothing further. Thank you.

10 THE COURT: Okay. Mr. Buchanan, any questions of
11 this witness?

12 MR. BUCHANAN: Yes, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. BUCHANAN:

15 **Q.** Mr. Hunsinger, my name is Ryan Buchanan, and I'm a federal
16 prosecutor working on this -- on this case.

17 Sir, you live in Virginia; correct?

18 **A.** Yes.

19 **Q.** Do you know where your son lives?

20 **A.** He just recently relocated. He lives up near the Grant
21 Zoo. I can't recall the exact address off the top of my head.
22 But I looked at it on Google Earth.

23 **Q.** Have you ever been to his place?

24 **A.** Not this new place, no.

25 **Q.** Had you been to his previous place?

1 **A.** Yes.

2 **Q.** Where did he live before that?

3 **A.** I don't know the exact address. But yes, I have been
4 there. Two or three visits.

5 **Q.** Do you know with whom he lived?

6 **A.** Well, previously, he lived with his significant other,
7 Kate. And then I think at one time they have had other
8 roommates off and on.

9 But I don't ask the details of his everyday.

10 **Q.** Sure. And that sort of brings me to my point. How
11 frequently do you speak to your son?

12 **A.** Well, recently every day. But at least every few weeks or
13 months.

14 **Q.** Every couple of months?

15 **A.** Yes.

16 **Q.** So you don't speak weekly?

17 **A.** No.

18 **Q.** Okay. Prior to this morning, when was the last time you
19 saw your son?

20 **A.** It has been probably a year. Part of that is because of
21 the pandemic. You know, I usually get down to Georgia a couple
22 of times a year. But because of the pandemic, we just haven't
23 been traveling down here.

24 **Q.** And I believe Mr. Lovell asked you on direct. You are
25 aware your son was arrested in 2017?

1 **A.** Yes, I was aware of the arrest.

2 **Q.** And it was actually three arrests; right?

3 **A.** Well, apparently. I knew of the one particularly. I
4 suspected or thought that there was one or two more. But I
5 didn't know all the details.

6 **Q.** Which one did you know about?

7 **A.** Well, the one at Georgia Southern -- Georgia State College
8 or something.

9 **Q.** That was willful obstruction of a law enforcement officer
10 is what he was arrested for? Sound right?

11 **A.** Sounds about right.

12 **Q.** And then in May, he was arrested by Georgia State Patrol
13 for preventing or disruption of a General Assembly session or
14 other meeting. Does that sound familiar?

15 **A.** I did not know about that one.

16 **Q.** And then two weeks later also in 2017, he was arrested at
17 Georgia State for criminal trespass. Were you aware of that
18 one?

19 **A.** No, I was not aware of that one.

20 **Q.** I'm sorry?

21 **A.** No, I was not aware of that one.

22 **Q.** And all of these happened -- if we lump things like we do
23 nowadays sort of pre- and post-pandemic, these three arrests in
24 2017 were all prior to the pandemic; correct?

25 **A.** Right.

1 Q. These were prior to the -- the events that followed the
2 death of George Floyd; correct?

3 A. Yes.

4 Q. And so let me ask you this: Do you follow your son on
5 Twitter?

6 A. No. I'm not a member of Twitter.

7 Q. And I guess maybe -- were you sitting in court while the
8 special agent was testifying?

9 A. Yes.

10 Q. Okay. So you are aware that he Tweeted, you know,
11 something to the effect of holy F, this is a major burn shit
12 down moment?

13 A. Well, I wasn't clear whether it was a Tweet or a re-Tweet.

14 Q. Re-Tweet. Are you aware of that re-Tweet?

15 A. Yes. I know the re-Tweet.

16 Q. And you learned of it this morning -- this afternoon in
17 court, or you knew of it beforehand?

18 A. I knew of it beforehand because I had seen a copy of the
19 affidavit.

20 Q. Okay. But you didn't know about it prior to your son's
21 arrest?

22 A. No.

23 Q. And, likewise, for the other references to his Twitter
24 accounts where he re-Tweeted or Tweeted things that said set
25 fire or throw Molotovs or those other things that were

1 obviously important to the agent in investigating an arson, did
2 you know about those things prior to seeing the affidavit?

3 **A.** No.

4 **Q.** What's your understanding, Mr. Hunsinger, of what your son
5 is charged with?

6 **A.** My understanding --

7 **Q.** Yes.

8 **A.** -- is he is charged with trespass, vandalizing government
9 property, and assaulting a federal officer.

10 **Q.** Do you understand he is charged with arson?

11 **A.** What?

12 **Q.** Do you understand he is charged with arson?

13 **A.** And I believe, yes, a case of arson, yeah. I think that
14 is Count 1.

15 **Q.** And, Mr. Hunsinger, do you know where your son works?

16 **A.** He works with ProGeorgia.

17 **Q.** And what is that, to your understanding?

18 **A.** My understanding is a nonprofit that helps look after
19 civil right-types needs or helps other nonprofits. I mean --

20 **MR. BUCHANAN:** Nothing else, Your Honor.

21 **THE COURT:** Okay. Anything else of this witness,
22 Mr. Lovell?

23 **MR. LOVELL:** No, Your Honor. Thank you.

24 **THE COURT:** Okay. You may step down, Mr. Hunsinger.
25 Careful.

1 Any other witnesses regarding the detention and bond?

2 MR. LOVELL: No, Your Honor.

3 THE COURT: Okay. Argument regarding bond?

4 MR. LOVELL: Yes, Your Honor.

5 Judge, there are some things I would like to make
6 clear, first of all. The re-Tweets that have been discussed
7 that I want to make certain -- I think the Court knows it, but
8 it could have been blurred during the course of these
9 proceedings. And that is that the events in question occurred
10 on July 25th, and these alleged Tweets -- that is of this year.
11 These alleged Tweets or re-Tweets, to be more exact, occurred
12 more than a month later in August.

13 So I don't think -- and I want to be careful -- that
14 the Government is not saying that these re-Tweets had anything
15 to do with inciting this alleged event on July 25th because the
16 Tweets, again, occurred more than a month later.

17 But I want to also take some issue with some parts of
18 the pretrial services report. First of all, something that I
19 can -- we can all agree on -- and that is that there are three
20 arrests alleged. And in the last several minutes, much -- some
21 significance has been placed on these as it pertains to
22 Mr. Robert Hunsinger's knowledge of the details of these
23 arrests.

24 I want to point out to the Court that these arrests
25 were not considered significant by the authorities in Fulton

1 County. And how do I know that? Well, first of all, I'm
2 looking at this pretrial services report, and it indicates that
3 they were not prosecuted. That term expired as a reflection
4 and under law that when three years passes the statute of
5 limitations and charges are not brought on a misdemeanor that
6 the charges expire based upon the statute of limitations.

7 I have gone -- and, actually, they were dismissed --
8 two, perhaps three of them were dismissed long before that
9 because I went and looked at the docket to be certain that
10 there was no history of Mr. Hunsinger not showing up for court.
11 And everything that I saw indicated that he had shown up for
12 court and that the State of Georgia thought so much of these
13 charges that they chose not to prosecute them.

14 So as they are being used here today -- and I think
15 it is very significant the way they are being used. Because if
16 you look at the last page of the pretrial services report, you
17 have -- beginning on Page 3, you have six different items that
18 are cited in support for the Government's motion.

19 However, if you'll look at 2, 5, and 6, they have
20 found ways -- and I don't criticize. These are maybe just
21 different boxes that are available to be checked. So I don't
22 want that to sound as a criticism. Somebody is trying to do
23 their job.

24 But just the way the bureaucracy works, there are
25 three different ways that are offered to say that he had three

1 arrests, three years ago that were not pursued by the State of
2 Georgia.

3 So, Number 2, we see prior arrests and conviction --
4 convictions. And first of all, there are no convictions. So
5 that word is a misstatement. There are prior arrests and
6 dismissals.

7 Number 5, a pattern of similar criminal activity
8 history. Well, that's just not accurate. What is being
9 reported in this report is at worst instances of civil
10 disobedience where there is an arrest made and the authorities
11 chose not to prosecute it.

12 And then, again, in Number 6, it is called a criminal
13 history. Well, if charges have been dismissed, that is hardly
14 a criminal history.

15 So that is a way of stating the same thing that is
16 built on a very faulty premise three times. So we jump from
17 four entries to six by virtue of the way that is drafted in a
18 report.

19 And while I'm there -- I don't want to jump around
20 too much. I want to stay right there at Page 3 towards the
21 bottom because the assessment of nonappearance -- we see an
22 allegation of mental health history, that that is a grounds for
23 viewing nonappearance -- a risk of nonappearance.

24 Well, when we look at the report, it says that this
25 is based on -- and I want to direct your attention to that same

1 page towards the top, the second bold heading, mental health.
2 The defendant did not provide any history of mental health
3 issues. That is another way of saying he said he had no mental
4 health issues. It is just worded in a way that is very
5 negative toward my client.

6 According to the Marshals' personal form -- and
7 perhaps that should be personnel form or personal form I guess
8 for him -- the defendant is suicidal. Well, my client denies
9 that. He denies that is suicidal.

10 What I can tell you is that I reached out to his
11 court-appointed attorney who met with him on Thursday. And I
12 asked her about this point-blank. And that's -- now you'll
13 have to excuse me because I forget Vidhi's last name. My
14 apologies.

15 THE DEFENDANT: Joshi.

16 MR. LOVELL: Joshi. Thank you. Vidhi Joshi.

17 I asked her about that. And she said no, he was very
18 upbeat. There was no indication of depression. And that was
19 Thursday.

20 Mr. Hunsinger reached me from the jail -- actually,
21 this call will be recorded. I don't have it today to play for
22 you today. But he called me. And the thing that stuck out in
23 my mind the most -- not having seen this report yet, when he
24 called me on Saturday morning, it struck me that he was so
25 positive because my experience with people who have been

1 arrested is that in the first 48 hours, the first week,
2 sometimes the first couple of weeks, they are very depressed
3 and down because they have been pulled out of their lives as
4 they know it and placed in confinement in a very unusual
5 circumstance.

6 And the thing that really stuck in my mind is this
7 young man is extraordinarily positive and upbeat considering
8 the circumstances that he is under. He is handling it well. I
9 was very comfortable with that because I'm always concerned
10 about my clients' mental health.

11 And while we are there at the assessment of
12 nonappearance, it is important to see that, again, criminal
13 history is cited for that as a reason for nonappearance. So we
14 have got two things that are cited as assessment -- that are
15 cited as risks that this gentleman will not appear in court as
16 directed. And both of those are built on very infirm -- on a
17 very infirm foundation, again mental health history, and there
18 is absolutely none of it. Put it up. If you have got, if you
19 have got some records that contradicts everything else about my
20 client, let us see it. And criminal history, again, three
21 charges that were dismissed.

22 And, finally, before I leave that section, I want to
23 say that violent extremist, Number 4, marked as a possible
24 terrorist organization, number in NCIC. That should not be
25 accepted by this Court without some support of it. We do not

1 have scarlet letters any more in this country. And if someone
2 wants to make an allegation like that, please put the document
3 up front and center and let's question it. Let's dig down into
4 it and find out -- allow me a chance to sift through it and to
5 challenge it, as I have done with so many other allegations
6 here.

7 So, Judge, I turn to the -- the brief that I was able
8 to file a few hours before court. And I want to just review
9 some of the salient points.

10 This is an occasion where the burden -- you know, as
11 I have conceded, the burden on probable cause is difficult. It
12 is difficult for -- it is easy for the Government to meet their
13 burden. It is difficult for the defendant to challenge it in
14 this forum. It is a low burden.

15 However, when we look at the burden for determining
16 whether there is a threat to the community, the Government has
17 the burden. And they have to demonstrate by -- they have to
18 demonstrate by clear and convincing evidence. That is a very
19 high burden. Some judges have said that is 70 percent --
20 70 percent certainty.

21 Well, there's -- but you've -- you have experience
22 with that burden. You know it is a high burden that no
23 conditions or combination of conditions other than detention
24 will reasonably assure the safety of any other person in the
25 community.

1 Well, let's take a look at that statement. Let's
2 look at it in this gentleman's life. Since he has been
3 incarcerated on Thursday, he turned 28. On Sunday, he turned
4 28. So we have 28 years of life. Approximately 27 and three
5 quarters of those years are lived prior to this allegation.

6 And other than civil disobedience, we have somebody
7 who by all accounts has lived a life where he has sought --
8 from reading these letters, Judge, you see that this is
9 somebody who has a heart for the community, who is out there
10 advocating for the homeless, who wears his heart on his sleeve.
11 And he has conducted himself that way throughout his life.

12 And then we have this allegation that shortly after
13 the George Floyd incident when people were upset and they felt
14 like they didn't have a voice and they were in the streets and
15 people were upset and temperatures were high, the allegation,
16 if we accept it for purposes of this hearing that it is
17 accurate -- it was an anomaly, it was an aberration.

18 And then what we have is from July 25th to an arrest
19 in November, over three months, where we return -- and I
20 understand that the Government cites to some re-Tweets. But as
21 far as actions and not words -- because we still do have the
22 First Amendment alive and well, I think, in this country. I
23 know we do. I make that clear -- that this gentleman is again
24 participating in life as a good citizen and upstanding citizen.

25 So when we talk about -- and now we have -- what has

1 changed. Now we have the intervention of the United States
2 Government. We have the intervention of the courts. We have a
3 Court who can impose a bond that will have consequences on
4 Mr. Robert Hunsinger. We have a Court that can impose
5 conditions that would restrict, that would impose a curfew upon
6 Richard Hunsinger, potentially an ankle monitor, things that
7 can assert -- assure us -- and, by the way, on behalf of my
8 client -- and I have his authority to speak. When the Court
9 sets bond, hoping that the Court sets bond, trusting that the
10 Court sets bond, he will not participate in any protests just
11 so that -- that is a right that I feel like perhaps the Court
12 would -- might have hesitation about being affirmative in
13 saying I want you to give up that right.

14 But I want to know that -- I want you to know, Judge
15 Walker, that he volunteers to surrender that right. He will
16 not participate in any protests while he is on bond and while
17 this case is pending.

18 So he can be -- he can have a curfew and be monitored
19 with an ankle monitor to assure this Court that the 28 years of
20 his life, less the allegations of one evening, are what is
21 reliable and not a period of an hour or a half hour but rather
22 the entire 28 years.

23 Now, the other thing, Judge, is that the Government
24 has the burden of proving by a preponderance of the evidence
25 that detention is necessary to reasonably assure the appearance

1 of the defendant at future court proceedings.

2 Well, Judge, again, Robert Hunsinger is confident
3 enough to put up his savings that his son is going to show up.
4 And this Court can impose -- again, put an ankle monitor on
5 him, something to know where he is going.

6 He does not have a passport. I'll tell him, as I
7 tell all of my clients when it comes to bond, don't ever try to
8 outrun the U.S. Marshal because they are the best. They are
9 the best at finding people. And he is not -- he is not
10 inclined to do that. He's going to face these charges, and I'm
11 going to represent him here in court.

12 Judge, I also want to point out that he does not
13 stand alone in this district. There have been some similar
14 charges where the Government has sought detention. And other
15 magistrates in this district have said, you know, Government, I
16 think actually there are some conditions that we can fashion.

17 So in the case of Jesse James Smallwood, very similar
18 charges, including a count of arson. And arson is the most
19 serious charge here as it pertains to the penalty.

20 Mr. Smallwood was given a bond. He was released on
21 his own recognizance with a promise to sign up -- with a
22 promise to show up in court. I attached those conditions that
23 were set by Judge -- that one was Judge Fuller, I believe. It
24 was here in the Northern District.

25 Similarly, the case of Randall Mellon is a little bit

1 different in that it is a gun count. But I had the opportunity
2 to speak with his attorney, Nicole Kaplan. And she told me --
3 it is an interesting case, Judge, because he's a prior
4 convicted felon. But his prior conviction -- his prior felony
5 that is the underlying felony for this is possession of
6 marijuana, a crime that our federal government doesn't
7 prosecute -- it was felony weight but not a distribution count.
8 It is something that our Government does not prosecute. I
9 think as of last week we now have four or five more states and
10 jurisdictions that have legalized or decriminalized marijuana.
11 And our federal government isn't even prosecuting that.

12 But they indicted Mr. Mellon for possession of
13 firearms by a convicted felon with a prior conviction of
14 possession of marijuana because they suspected him of agitating
15 disturbances and violence. And I spoke with Ms. Nicole Kaplan.
16 And she informed me that that was the -- the primary issue that
17 was taken up. Or that was a large issue. I don't want to put
18 words in her mouth. That was a significant issue that was
19 taken up at the bond hearing, the Government's allegation that
20 he posed a threat to civil disturbance, civil violence.

21 But yet in his case -- and he's a prior convicted
22 felon, albeit. I'll stand by their words -- are pretty --
23 pretty insignificant in the scheme of things felon, and he was
24 given a 50,000-dollar secured bond.

25 Judge, the last thing I would like to point out

1 before I sit down is, as are you, as are the Government, I'm
2 concerned for K.C., the employee who was in the building at
3 that time. What we didn't hear today is any knowledge -- any
4 assertion that my client or anyone else knew of K.C.'s presence
5 in the building.

6 There was an allegation that people were flashing
7 laser lights in his eyes. But what we heard on the stand today
8 is that the laser lights drew K.C.'s attention to the window.
9 And that is what brought him to the window, the flashing of
10 laser lights.

11 So in light of the fact that no one knew that the
12 building was occupied, that does seem to be a tenuous count
13 that the Government has here at the very least. And that does
14 concern me. I want the Court to know that because when we are
15 talking about intentionally harming humans that is a different
16 story than intentionally harming a building or protesting in
17 that manner.

18 And the evidence here today does not establish --
19 there is not strong evidence that there was an assault on an
20 officer intentionally on July 25th.

21 So, Judge, with that in mind, I ask you to look
22 critically at these recommendations. I ask you to look
23 critically at the evidence. I ask you to think about what we
24 are willing to do to ensure that there is not a threat to the
25 community.

1 And, again, I wish I had been clever enough
2 beforehand to take 200 -- to take 365 and a quarter days of the
3 year and multiply that times 28 and then add about two more
4 days to that and tell you how many days my client has been
5 alive. It is a lot of days. And that we're talking about this
6 one day -- these allegations pertaining to one day on July
7 the 25th of 2020.

8 I ask you, Your Honor, to fashion conditions that
9 assure you that he will not pose a threat to the community,
10 threat of harm, and that he will appear as directed.

11 Thank you, Judge Walker.

12 THE COURT: Okay. Mr. Buchanan?

13 MR. BUCHANAN: Just briefly, Your Honor. With
14 respect to the assault, the 111 count, that count is not
15 just -- it doesn't personally have a knowledge requirement of
16 whether or not the officer -- they knew that the officer was in
17 the building. But it also criminalizes impeding, intimidating,
18 and interfering with a federal officer. And we would posit
19 that throwing these burning objects through the door of that
20 building would satisfy that statute.

21 With respect to Smallwood, it is a Gainesville case.
22 Smallwood and four others were arrested after they shot a
23 flare -- I think one or two flares into a police vehicle.
24 Different in the amount of people involved. Different in the
25 type of damage that was caused because of that.

1 And that case also doesn't have sort of a human
2 component to it. This was a parked car that was away from
3 anybody. Here, we have charged in the complaint that 111
4 count.

5 And I believe Mr. Lovell essentially mentioned it
6 with respect to Randall Mellon. That was a gun case. He
7 ultimately -- the way that case was, like so many others, there
8 was a review of his social media. That social media contained
9 remarks and pictures of holding firearms. A search warrant was
10 conducted at his house, and firearms were found. So that is a
11 gun case. That is different from what we have in this case.

12 Mr. Lovell mentioned the timing of the Tweets. And
13 I'm not trying to mislead the Court into thinking that saying
14 that the burns stuff down and all of these type Tweets happened
15 in August, that they happened before the July 25th. They
16 didn't.

17 What did happen before is Mr. Hunsinger, the account
18 we believe is his, posted publicizing this event. At that
19 event, this arson happened. The Tweets and re-Tweets after
20 that where he mentioned Molotov cocktails and he mentioned
21 burning stuff down, we printed those out because those are just
22 consistent with the behavior that he is charged with. And that
23 behavior happened months before those Tweets were done.

24 With respect to Mr. Hunsinger's father serving as
25 custodian, we would -- we would argue that he is not a suitable

1 custodian. He mentioned he hadn't seen him in a year. He
2 mentioned that they only talked over -- several months went
3 between times when they would talk.

4 He was unaware of these other events that happened in
5 2017. And those 2017 events, I believe, are instructive as to
6 how Mr. Hunsinger is not a suitable candidate for bond. He
7 obviously has some issue with authority and law enforcement.
8 And that is the quintessential component of what supervised
9 release or bond is. And his previous behavior just shows he
10 does not have it.

11 He has got an obstruction arrest. Mr. Lovell can
12 categorize this as civil disobedience. You know, that is his
13 right to categorize it. But he's charged with arson. He is
14 not charged with civil disobedience. He is charged with
15 assaulting an officer. He is not arrested because he is a
16 protester. And he is charged with damaging government
17 property.

18 I would point out that this case -- the arson count
19 has a five-year mandatory minimum, which would give someone the
20 incentive to not -- to not show up.

21 And, again, Your Honor, I just point to one phrase or
22 bit of argument that Mr. Lovell used in which he noted that
23 these events happened in 2020 and there were those who felt
24 that they were without a voice. And perhaps those folks did
25 need a voice. That is absolutely true. That does not give

1 anyone a right to burn down a building. That doesn't -- that
2 is not a part of the First Amendment. Throwing Molotov
3 cocktails through government buildings is not constitutionally
4 protected speech.

5 And so I would like to just remind the Court of why
6 we are here. We are not here because of any views or any sort
7 of positions or any type of constitutional activity that
8 Mr. Hunsinger has participated in. We are here because he
9 tried to burn down a building.

10 And given his history with not abiding by the rules
11 when it comes to authority, his history, not his views -- given
12 his history of that, we don't believe that he is a suitable
13 candidate for bond and he should be detained while this matter
14 is pending trial.

15 MR. LOVELL: Judge, may I be heard again --

16 THE COURT: Sure.

17 MR. LOVELL: -- just briefly?

18 THE COURT: Sure.

19 MR. LOVELL: Thank you, Judge.

20 First, I would just like to pick up where we left
21 off. The Government continues to ask this Court to detain my
22 client based upon charges. They have not brought any
23 witnesses. I have categorized that as civil disobedience, and
24 I have not categorized the charges that are before the Court
25 today as civil disobedience. That is a -- that is not

1 accurate. If I did, it was my error and I slipped up. But I
2 don't believe I have.

3 But my point being is that the Government keeps
4 focusing on those three arrests. They have not brought any
5 witnesses here. And the record is clear that the cases were
6 not prosecuted. They were not pursued by the State of Georgia.

7 So it is wholly -- it is very unfair for the
8 Government to keep harping on that for something that wasn't
9 pursued by the state.

10 It is clear what they thought of it. Because if they
11 thought it was a serious crime, they would have pursued it.
12 They didn't. They let it go.

13 I just want to touch briefly -- I don't want to --
14 you know, we're not prepared to brief this right now. But I
15 believe there is an intent on the assault charge to demonstrate
16 that somebody intended to assault an officer. It is the
17 classic -- you know, if I spin around -- in this room, if I
18 spin around and turn to talk to somebody and my hand flings out
19 and I hit an officer, which could happen, I didn't assault him.
20 I didn't intend to do that. It is just -- I think that is
21 black letter law. And the law does impose elements of intent
22 when it is not mentioned in the statute.

23 I want to go back -- the Government differentiates
24 Smallwood. I want to -- Jesse James Smallwood. I want to
25 point out that he also faced a five-year mandatory minimum on

1 an arson charge.

2 So that -- while we can talk about some specifics and
3 this and that and the other thing is the Government sought
4 detention in that case as well with a five-year mandatory
5 minimum he was facing.

6 And then I want to make one other thing clear. I'm
7 not -- I did not call Robert Hunsinger to establish him as a
8 custodian. My anticipation would be that the conditions of
9 bond will serve -- that pretrial services -- that my client
10 will report as directed; that if the Court imposes an ankle
11 monitor -- all of those things will serve to assure that he
12 abides by the Court's directives.

13 My reason for bringing Mr. Hunsinger, the father,
14 into the courtroom today was just simply to establish some
15 background but then also that he's willing to pledge his own
16 assets. He is confident enough that his son will show up that
17 he will put his savings, his retirement on the line to
18 demonstrate his confidence.

19 And then finally, Judge, the one thing that is the
20 elephant in the room is that it is COVID. I think there is a
21 strong basis to grant my client a bond in the absence of COVID.
22 But we really don't need more people in jail right now.

23 And for all of these reasons that we have argued
24 today, Judge, please set a bond for Mr. Hunsinger. Thank you.

25 THE COURT: Okay. Thank you.

1 Based on the information presented to the Court --
2 first, I want to commend Mr. -- the defendant for his advocacy
3 on behalf of the housing community. I have read through every
4 letter.

5 However, despite your advocacy, at some point, your
6 civil disobedience, your advocacy, whatever you want to call it
7 took a dark turn and fell off the rails. And the conduct
8 alleged in the complaint is anti everything that the movement
9 stands for.

10 The tossing of cinder blocks and Molotov cocktails
11 into a building and you didn't know whether or not anybody was
12 there, whether you saw the guy when he opened the door -- we
13 are very fortunate that the building didn't burn down with the
14 two individuals that were in there -- that this thing didn't
15 take an even darker turn than what we have here.

16 So based on what the Court has heard, while I was
17 considering maybe letting you stay with your father -- but I
18 did not want to do that with regard to you already having a
19 sister having to have surgery -- and just in light of what I
20 have seen in the complaint -- and this is not about First
21 Amendment. This is about destruction of government property.
22 It had nothing to do with the things that were going on with
23 George Floyd and the community.

24 So your conduct at issue in this case shows that you
25 are a danger to the community. So for this and other reasons,

1 the Court is going to detain you.

2 Anything else on behalf of either party?

3 MR. BUCHANAN: Not on behalf of the United States,
4 Your Honor.

5 THE COURT: If there is nothing else in front of the
6 Court, the court is in recess.

7 COURTROOM DEPUTY CLERK: All rise, please.

8 **(The audio-recorded proceedings were thereby**
9 **concluded at 3:18 P.M.)**

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C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, SHANNON R. WELCH, RMR, CRR, Official Court Reporter of the United States District Court, for the Northern District of Georgia, Atlanta Division, do hereby certify that the foregoing 56 pages constitute a true transcript of proceedings had before the said Court, held in the City of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 17th day of December, 2020.

Shannon R. Welch

SHANNON R. WELCH, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
OFFICIAL CERTIFIED TRANSCRIPT